

Potlatch

Intra Company Memo

Potlatch Corporation

Date: March 7, 1986

To: J. R. Morris

From: J. C. McAdoo

Subject: STMA Avery Branch February Status Report

As reported over the last three months, the Bureau of Land Management ("BLM") has taken a position in a letter in early November to the Federal Highway Administration ("FHWA") that the agency had simply taken a "records maintenance" action in documenting in 1981 Interior's grant to Potlatch of a continuation or extension of the Milwaukee Road easements. Potlatch sent a letter in late November to BLM director Burford challenging the state office's action, requesting clarification of the intent of the action, and again requesting the assistance of the director in documenting Interior's authority and intention in granting a continuation or extension of the Milwaukee Road easements to Potlatch. A letter was received in early February from the BLM assistant deputy director regarding Interior's authority and intention in 1981. The BLM position is that although the Federal Land Policy and Management Act of 1976 ("FLPMA") "specifically preserved all valid existing rights of the holders of rights-of-way granted under the Act of March 3, 1875 (43 USC 934-939), the act was silent as to the authority of the Secretary of the Interior or the BLM "to approve, prohibit, or condition assignments of a right-of-way from a railroad company to another entity." Therefore, application must be made under Section 509(a) of FLPMA for "a new right-of-way grant with a simultaneous agreement for the consideration of the existing grant."

A final attempt at negotiating acceptable compensation was made in late February. An agreement on settlement was reached in which Potlatch would (1) receive a lump sum payment, (2) be allowed to salvage the thirteen miles of track from Marble Creek to Avery to its account, (3) allow FHWA use of the two timber bridges (Rock Creek and Storm Creek) as temporary haulage structures, and (4) recover all the economically salvageable material from the two timber bridges plus the steel beams from the Slate Creek bridge. A memorandum of understanding between FHWA and Potlatch has been drafted which will be submitted for review and approval by FHWA to its regional and Washington, D. C. staffs, as well as to the U. S. Department of Justice.

JCM:sv

cc: H. A. Arnold
J. W. Bacon
K. C. Boling
L. T. Cecil
M. D. Clausner
F. M. Davis
R. J. Hallisy

G. W. Highsmith
L. L. Hogden
T. L. Maddock
M. E. McNichols
W. E. Mulligan
G. R. Page
J. K. Pattillo

G. E. Pfautsch
A. E. Schultz
R. D. Schlappy
P. Sinnitt
R. V. Warner

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MAR 10 1986
F.M.D.

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Potlatch

Potlatch Corporation

P.O. Box 1016
Lawton, Idaho 83501-1016
Telephone (208) 708-0123

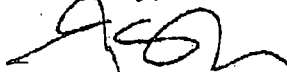
July 16, 1986

Mr. Richard C. Wasill
Project Development Engineer
Federal Highway Administration
Western District Federal Division
610 East Fifth Street
Vancouver, WA 98661

Dear Mr. Wasill:

Enclosed herewith, as requested in your June 23, 1986 letter to me, are an original and one copy of the agreement covering the reimbursement to Potlatch Corporation ("Potlatch") by the Federal Highway Administration ("FHWA") for expenses incurred in removal and disposal of a diesel fuel tank on Potlatch's railroad right-of-way at Avery, Idaho. The documents have been executed on behalf of Potlatch by James R. Morris, Vice-President, Western Division, Wood Products Group.

Sincerely,



James C. McAdoo
Director, Corporate
Transportation and Purchasing

JCM:rp

Attachments

cc: L. T. Cecil w/o att.
M. D. Clausner w/o att.
M. E. McNichols w/o att.
J. R. Morris w/o att.
G. R. Page w/o att.
R. D. Schlappy w/att.

JUL 18 1986

34110

PROJECT AGREEMENT
IDAHO FOREST HIGHWAY PROJECT
ST. JOE RIVER ROAD

THIS AGREEMENT, by and between the U.S. Department of Transportation, Federal Highway Administration, hereinafter called the Government, and Potlatch Corporation ("Potlatch") of Lewiston, Idaho, hereinafter called the "Company."

WHEREAS, the Government has planned the construction or improvement of a portion of the St. Joe River Road, FH 50, located near Avery, Idaho.

WHEREAS, due to the construction or improvement of this project, it is necessary to remove and dispose of one five hundred thousand (500,000) gallon diesel fuel tank, its contents, and its concrete base structure belonging to the Company and shown by appropriate symbols on the attached plans and photographs marked Exhibit B, and by reference made a part of this agreement; and

WHEREAS, it is deemed to be in the best public interest that the required removal and disposal of said tank, contents, and base structure be accomplished by the Company as owner of the facility; and performed under the terms of this agreement;

NOW, THEREFORE, in consideration of the foregoing, IT IS MUTUALLY AGREED that:

Performance of Work

The Company shall perform or cause to be performed the work herein described, furnishing all materials and supplies necessary and incidental to the removal and disposal of its tank, contents, and base structure in accordance with the plans, specifications, and estimates attached hereto.

Construction work is to be performed by Company Forces and contract awarded by Company to Crowley Environmental Services.

34113:2

Cost

The estimate of costs in support of this agreement as prepared by the Company is attached hereto, marked Exhibit A, and is by reference made a part of this agreement.

The total cost to the Government is to be \$36,234.

Authorization to Proceed

The Company is authorized to commence work upon execution of this Agreement.

Scheduling and Coordination

The Company shall complete the work herein described no later than September 30, 1986.

Final Billing

The Company will submit to the Government by delivery to the Division Engineer, Western District Federal Division, Federal Highway Administration, 610 East Fifth Street, Vancouver, Washington 98661-3893, one final and complete billing for the agreed lump sum of \$36,234 not later than 180 days after satisfactory completion of the work. The Government will reimburse the Company in the amount of the above agreed lump sum.

Permits

The Company shall make application to appropriate authorities to obtain all necessary permits required to perform work herein described.

3411J:3

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of signature of the Company.

Potlatch Corporation
Company

BY: 

(Typed Name): J. R. Morris

TITLE: Vice President, Western Wood Products

DATE: 7/16/84

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WESTERN DIRECT FEDERAL DIVISION

BY: 

James N. Hall

TITLE: Division Engineer

DATE: 6/23/86

CROWLEY ENVIRONMENTAL SERVICES



JUN -2 1986

J. C. M.

May 29, 1986

St. Marie River Railroad Company
P.O. Box 614
St. Marie, Idaho 83861

Thank you for the opportunity to make a proposal for removal of the 500,000 gallon tank in Avery, Idaho.

We propose to transport 5000 gallons of #2 diesel to Avery and mix it into the congealed diesel in the tank, using hydraulic submersible pumps. The fluid would then be transported to Lewiston, Idaho for burning at the Potlatch Forest Products #4 power boiler.

The tank would be cleaned and washed with high pressure water and certified for man entry and hot work by a certified marine chemist.

The tank will then be dis-mantled and sold for scrap. This proposal does not include any demolition of the foundation or piping outside the tank.

We respectfully submit a quote of \$29,000.00 for the work described above. Subject to a mutually agreeable contract.

Sincerely,

CROWLEY ENVIRONMENTAL SERVICES

Robert C. Huston
Asst. Operations Supervisor

RCH:jb

EXHIBIT A

3400 East Marginal Way South
Seattle, Washington 98134
(206) 892-4890
Telex 47-40099

Post Office Box 17178
Portland, Oregon 97217-0178
(503) 283-1244
Telex 38-0935

201 Danner Avenue
Anchorage, Alaska 99502
(907) 248-8581
Telex 090-45403

6-18-86

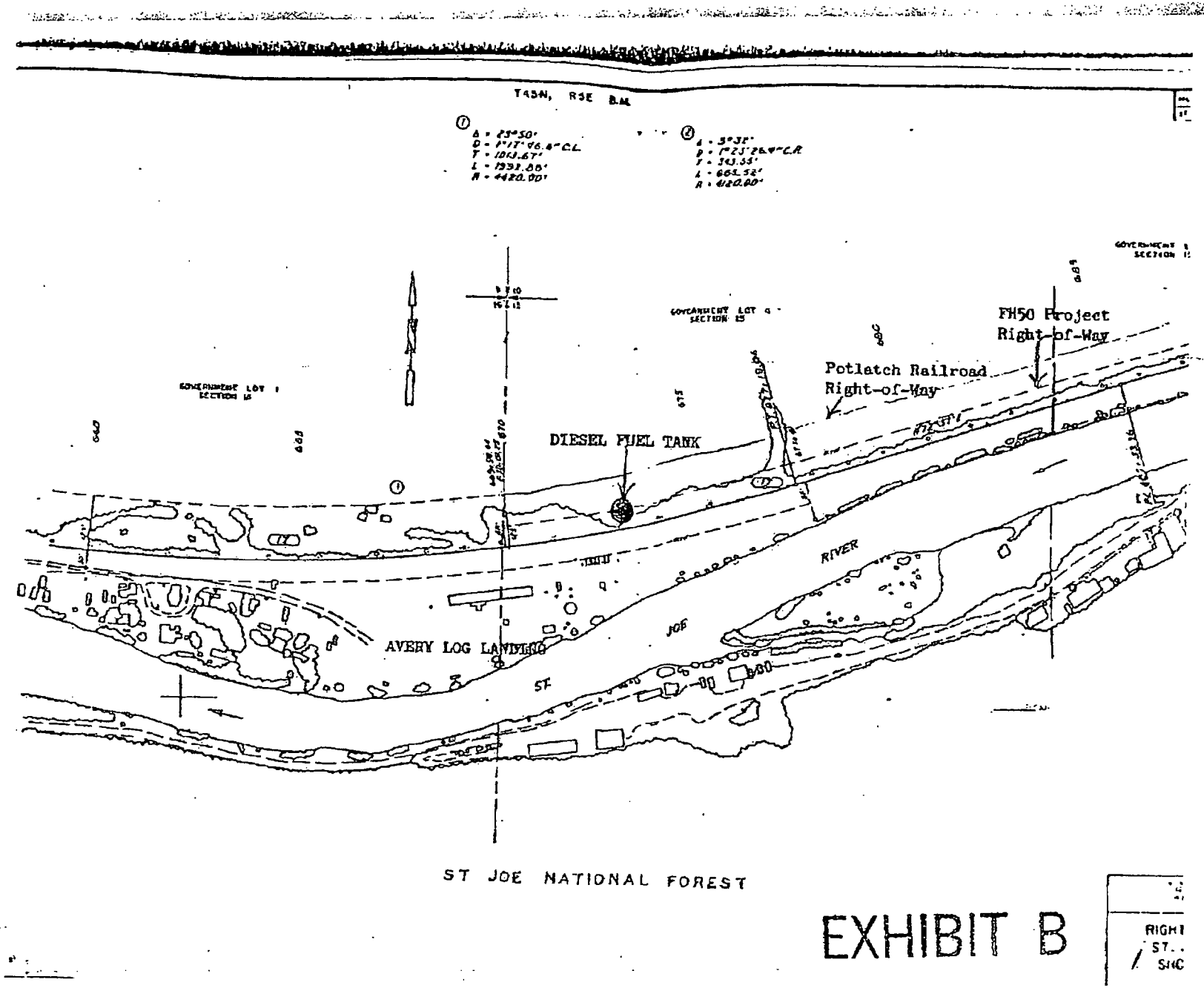
IDFH 50-1(6)
St. Joe River Road

Cost provided by James C. McAdoo, Potlatch Corporation
to remove and dispose of the concrete and aggregate
base structure of the 500,000 gallon storage tank shown
in Exhibit B.

Remove and dispose of Concrete and aggregate	\$ 5234
Administration Cost	<u>2000</u>
	\$ 7234

The above cost were provided by telephone and received by
L. Mass, Area Design Engineer.

EXHIBIT A



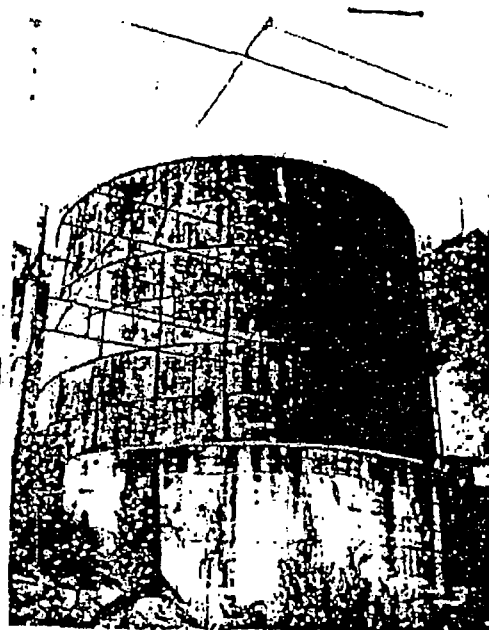
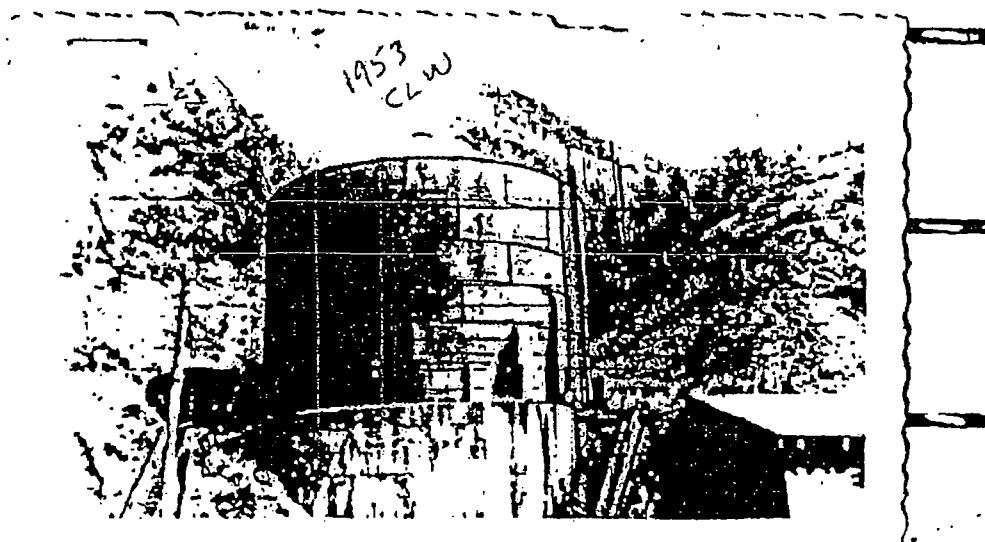


EXHIBIT B





Intra Company Memo

Potlatch Corporation

Date: August 4, 1986

To: J. R. Morris

From: J. C. McAadoo

Subject: STMA Avery Branch July Status Report

The Federal Highway Administration ("FHWA") took possession of the Marble Creek to Avery railroad right-of-way on July 11, 1986.

Crowley Environmental Services, a regional subsidiary of Crowley Maritime Corporation located in Portland, OR has completed the removal and disposal of a 500,000 gallon diesel fuel tank at Avery. The balance of the project the project, including removal of the tank's concrete support ring, will be completed by another contractor. FHWA will provide additional compensation covering the tank project. The rail materials salvage project has been started by A&K Railroad Materials, Inc. ("A&K"), a firm located in Salt Lake City, UT. A&K plans to complete the salvage of the forty-two (42) miles from St. Maries to Avery by September 30, 1986. A contract covering the salvage of forty-two (42) miles of the Avery branch telephone pole line has been awarded to G&K Services, Inc. ("G&K"), a utility services contractor located in Mount Vernon, WA. G&K will start the project in August and expects to complete the salvage of the line by September 30, 1986. Salvageable telephone poles, crossarms and glass insulators will be salvaged and delivered to St. Maries at the contractor's expense to be resold to offset the cost of removal.

Negotiation continues with the U. S. Forest Service ("USFS") regarding the sale of 5.61 acres of railroad right-of-way at Avery, Idaho not included in FHWA's Forest Highway 50 project. The USFS has offered \$4,000 or \$1,227 per acre for the property. The offer is substantially below the FHWA settlement per acre value. A counteroffer will be made. The sale is expected to be completed in September.

JCM:rp

cc: H. A. Arnold
J. W. Bacon
K. C. Boling
L. T. Cecil
M. D. Clausner
F. M. Davis
R. J. Hallisy

L. L. Hogden
T. L. Maddock
M. E. McNichols
W. E. Mulligan
G. R. Page
J. K. Pattillo
G. E. Pfautsch

G. E. Reeve
R. D. Schlappy
R. M. Steele
R. V. Warner

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AUG - 7 1986

F.M.D.

Memorandum of Understanding
Related to
Railroad Right-of-Way
between
Marble Creek and Avery, Idaho

WHEREAS, Potlatch Corporation (hereafter called "Potlatch") claims to own the entire former Milwaukee Railroad right-of-way between Marble Creek and Avery, Idaho and all improvements thereon; and

WHEREAS, The Federal Highway Administration's Western Direct Federal Division (hereafter called FHWA) intends to construct a portion of Idaho Forest Highway 50 along 12.182 miles of the railroad right-of-way from Marble Creek to Avery, Idaho; and

WHEREAS, FHWA claims that those portions of the railroad right-of way which were granted under the General Railroad Right-of-Way Act of March 3, 1875 and the Act of March 3, 1899 reverted to the United States when the Milwaukee Railroad abandoned common carrier service; and

WHEREAS, construction of the Forest Highway planned by FHWA requires removal of all track, ties, other track materials, and ballast from the entire 12.182 miles of right-of-way; and

WHEREAS, construction of the Forest Highway planned by FHWA requires use of the bridges during the first stage highway construction contract and removal of the bridges thereafter;

Now THEREFORE, Potlatch and FHWA, after due consideration of the legal issues related to ownership and the value of the right-of-way and improvements thereon, have agreed as follows:

1. The United States will acquire title to the entire 12.182 miles of right-of-way as shown on FHWA's Right-of-Way Plans for Forest Highway Project 50-1(6), dated October 3, 1985, (which are incorporated herein by reference) by filing a condemnation case in the United States District Court for the District of Idaho.
2. FHWA will pay to Potlatch, and Potlatch will accept, the sum of one million dollars (\$1,000,000) as just compensation for acquisition of Potlatch's interest in the former Milwaukee Railroad right-of-way between Marble Creek and Avery, Idaho and as compensation for the obligations undertaken by Potlatch in paragraphs 3 and 4 below.

3. Potlatch will remove all tracks, ties, other track materials, and ballast from the entire 12.182 miles of right-of-way by September 1, 1986 so that there is no interference with the first stage highway construction contract which FHWA intends to award on or about September 1, 1986. Potlatch will have title to all materials removed by Potlatch from the right-of-way.
4. FHWA will have the right to use the bridges during construction of the first stage highway construction contract. FHWA will remove the bridges and stockpile useable bridge material at reasonably accessible sites. Potlatch will remove the stockpiled bridge material during the normal log haul season upon reasonable notice from FHWA in a manner so as not to interfere with highway construction activities. Potlatch will have title to all bridge material removed by Potlatch.
5. FHWA allocates the payment of one million dollars as follows:
 - a. value of lands acquired (\$250,000);
 - b. value of services performed by Potlatch, including removal of ballast, disposal of unsalvageable material, administration of salvage contract, removal of bridge material, and assistance in expediting highway construction (\$440,000); and
 - c. value of litigation avoidance and avoiding litigation costs (\$310,000).

POTLATCH CORPORATION

FEDERAL HIGHWAY ADMINISTRATION

By: 

By: 

Date: April 18, 1986

Date: 4/21/86

*WTS: MOW
4-18-86*

*T. L. Maddock - RT Morris
R. R. Linton -
not in*
Potlatch

Intra Company Memo

Potlatch Corporation

Date: April 6, 1987

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APR 9 1987

To: J. R. Morris

F.M.D.

From: J. C. McAdoo

Subject: STMA Avery Branch March Status Report

Payment of \$10,000 was received from the U.S. Forest Service ("USFS") covering the purchase of 5.62 acres of railroad right-of-way at Avery, Idaho not taken by the Federal Highway Administration ("FHWA") for the Forest Highway 50 ("FH50") project and quitclaimed to the USFS.

Payment of \$36,234 was also received from the FHWA covering reimbursement of expenses incurred in the 500,000 gallon diesel fuel storage tank disposal project at Avery per the agreement between FHWA and Potlatch Corporation executed last year. Payment was delayed because of negotiations regarding the disposal of the debris from the tank's concrete support ring.

An agreement was also executed with FHWA covering the disposal of the ballast on the railroad right-of-way between Marble Creek and Avery. Under the terms and conditions of the agreement, Potlatch Corporation will be liable for any ballast not used in the FH50 fills up to a maximum cost of \$54,540.

JCM:rp

cc: H. W. Arnold
J. W. Bacon
L. T. Cecil
M. D. Clausner
F. M. Davis
R. J. Hallisy
L. L. Hogden

T. L. Maddock
M. E. McNichols
W. E. Mulligan
N. A. Linton
G. R. Page
J. K. Pattillo
G. E. Pfautsch

G. E. Reeve
R. D. Schlappy
R. M. Steele
R. V. Warner

Potlatch

Intra Company Memo

Potlatch Corporation

Date: July 29, 1988

To: W. O. Dameworth

From: Gary Reeve

Subject: STMA Avery Branch

As discussed in our telephone conversation of July 25, the Shoshone County assessor has made a determination that Potlatch Corporation has no interest in Lots 1-4, Section 15, Township 45 North, Range 5 East. The determination was based at least in part on the Federal Highway Administration (FHWA) title information covering certain Milwaukee Road right-of-way properties at Avery.

The FHWA information clearly shows as J. C. McAdoo pointed out in his memorandum of June 14 to F. M. Davis that title to the properties held by Milwaukee Road in Lots 1-4 were of an easement right only and that right was quitclaimed to Potlatch in 1980. The underlying property reverted to the Theriault estate under the General Railroad Act of March 3, 1875 and Act of March 3, 1899.

The diesel fuel tank was located within the properties in which Potlatch Corporation has no interest as determined by FHWA and Shoshone County. However the roundhouse was located on company fee ownership just southwest and across the take line of the FHWA from the tank. Attached are maps of the area.

GER

GER:ar
Attch.

cc: Marlin Clausner	w/attch.
Jim McAdoo	"
Dale McGreer	"
Jim Morris	"
Gene Wirsig	"

POTLATCH CORPORATION

FH50

ROUNDHOUSE
AREA

FORMER
TANK LOCATION
THERIAULT
ESTATE

U.S. Department
of Transportation
Federal Highway
Administration

Region 10
Alaska, Idaho,
Oregon, Washington

KOIN Center, Suite 600
222 S.W. Columbia Street
Portland, Oregon 97201

February 6, 1992

In reply refer to:
HRC-010

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MAR 9 1992

Douglas M. Conde, Esq.
Deputy Attorney General
Department of Health & Welfare
1410 N. Hilton, 2nd Floor
Boise, Idaho 83706

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MAR 16 1992

CLEMENTS, BROWN,
McNICHOLS

Re: Seepage of Petroleum into St. Joe River

Dear Mr. Conde:

We have reviewed your January 15, 1992, letter concerning the seepage of petroleum products from the former Chicago, Milwaukee Railroad maintenance and repair facilities near Avery, Idaho, into the St. Joe River. The Milwaukee Railroad used this facility to maintain, repair, and fuel railroad engines from about 1910 until 1980 after which it abandoned service and sold the railroad line from Avery to St. Maries, Idaho, including the Avery landing, to the Potlatch Corporation (hereafter Potlatch).

On May 16, 1986, the United States through a condemnation process acquired the railroad right-of-way, but not the Avery landing maintenance and repair yard, from Potlatch for the relocation of the St. Joe River Road. The 150-foot wide strip of former railroad right-of-way which the United States acquired runs along the northern border of the railroad maintenance yard furthest from the St. Joe River.

At the time the United States acquired the right-of-way, a large steel petroleum storage tank was partially located on the condemned property. The petroleum products remaining in the storage tank had jelled or solidified. Pursuant to our agreement with the Potlatch Corporation, Potlatch arranged for the removal of the storage tank. The jelled petroleum products were chemically treated so that they could be pumped into tank trucks and hauled to authorized disposal areas. When the tank was dismantled, the crushed gravel base under the steel tank was clean. That is, the gravel did not show any leakage of petroleum product from the tank.

Your letter implies that the United States discharged or released petroleum products onto its property subsequent to its acquisition of the property in October 1986. This is incorrect. The petroleum products which presently contaminate the Avery landing property and are now seeping into the St. Joe River were most likely discharged or released by the Milwaukee Railroad during the period 1910

through 1980 when it used the property extensively for railroad engine maintenance, repairs, and refueling. Such railroad operations typically involved draining engine oil, lubricating engines, cleaning engines with solvents, and refueling with diesel fuel.

One of our former employees has informed us that the railroad also dumped waste into a settling pond on the property. It is obvious that the culprit in this case was the Milwaukee Railroad -- not the Potlatch Corporation or the United States.

We have reviewed the Federal Clean Water Act, 33 U.S.C. § 1251 et seq., specifically § 1323(a), and the Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA § 16.01.2001 et seq., specifically §§ 16.01.2300.01, 16.01.2300.02, and 16.01.2850.04, cited in your letter.

The United States has waived its sovereign immunity under 33 U.S.C. § 1323(a) only in those instances where its activities result in the discharge or the run-off of pollutants. As explained above, the United States has not engaged in any activity which resulted in the discharge or run-off of petroleum products into the St. Joe River. At most, the United States is the innocent purchaser of property which had previously been polluted with petroleum products by the Milwaukee Railroad.

Moreover, the specific Idaho Water Quality Standards which you cite only apply to the discharge of pollutants or the release of petroleum products. Again, the United States has not discharged or released anything. IDAPA § 16.01.2300.01 states:

" . . . no new point source can discharge, and no existing point source can increase to discharge . . . to any water"

IDAPA § 16.01.2003.11 defines discharge as "the release of a pollutant into the waters of the state."

In that the United States has not discharged or released any pollutant on the property which it acquired or into the St. Joe River, it has not committed a violation within the meaning of these administrative rules, nor has the United States violated IDAPA § 16.01.2850. That rule prohibits:

" . . . authorized release[s] of hazardous materials, and petroleum products to state waters or to land such that there is a likelihood that it will enter state waters"

Again, the United States has not released any petroleum products.

The Idaho Water Quality Standards do not impose responsibility on the innocent purchasers to pay clean up costs of property that has been previously polluted with petroleum products. Rather, the Idaho standards place the responsibility on the person or persons who discharged or released the pollutant onto the land or into the river, i.e., the Milwaukee Railroad. It is fundamentally unfair and legally insupportable to claim that the United States is responsible for the clean up of the petroleum products that are seeping from the former Milwaukee Railroad property into the St. Joe River. We are prepared to continue to cooperate with the State with respect to the use of the highway right-of-way in the clean up of the petroleum pollution, for example our installation of culverts through our roadbed embankments to facilitate such clean up efforts, but our highway statutes do not authorize or envision expending funds appropriated for the construction of highways to clean up petroleum contaminated property for which we are not factually or legally responsible.

Sincerely yours,

James F. Zotter

James F. Zotter
Deputy Regional Counsel

cc: J. N. Hall (HDF-17)
A. J. Stockman (HPP-17.25)

Joe Nagel
Lisa Brocknow
Clyde Cody